

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KRAV MAGA NYC LLC d/b/a FIT HIT

CIVIL ACTION NO. \_\_\_\_\_

Plaintiff,

-against-

THE HARTFORD CASUALTY  
INSURANCE COMPANY d/b/a THE  
HARTFORD INSURANCE COMPANY,

Defendant.

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**COMPLAINT  
FOR DECLARATORY  
JUDGMENT**

Plaintiff KRAV MAGA NYC LLC d/b/a FIT HIT (“**Fit Hit**”), by and through its attorneys, WILSON & CHAN, LLP, as and for its complaint for declaratory judgment against Defendant THE HARTFORD CASUALTY INSURANCE COMPANY. d/b/a THE HARTFORD INSURANCE COMPANY (“**Defendant**”) alleges as follows:

**NATURE OF THE CASE**

1. This is an action for declaratory judgment pursuant to 28 U.S.C. §2201, in which Fit Hit seeks declaratory and ancillary relief against Defendant relating to the denial of insurance coverage for Plaintiff arising out of a property damage incident that occurred on September 25, 2023, which resulted in significant damage to Plaintiff’s property, which property was insured by Defendant.

2. Plaintiff seeks declaratory judgment declaring, *inter alia*, that (1) Defendant must provide insurance coverage to Plaintiff for the property damage pursuant to its insurance policy with Plaintiff for the property located at 122 W. 27<sup>th</sup> Street, New York, NY 10001 (the “**Premises**”); (2) for attorneys’ fees, costs and disbursements incurred by Fit Hit to date as a result

of Defendant's failure to provide coverage for which Fit Hit is entitled; and (3) for such further and other relief as may be just, fair, and proper.

### **PARTIES**

3. Fit Hit is a domestic limited liability company duly organized and existing under and by virtue of the laws of the State of New York with its place of business located at 122 W. 27<sup>th</sup> Street, New York, New York 10001.

4. Upon information and belief, Defendant is an insurance company organized pursuant to the laws of Indiana and authorized to conduct business in the State of New York with its principal place of business located at One Hartford Plaza, Hartford, Connecticut 06155.

### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332(a)(1) based on complete diversity of citizenship because this action arises between citizens of different states and meets the jurisdictional requirement for the amount in controversy.

6. This Court has subject matter jurisdiction to hear this case pursuant to 28 U.S.C. §2201(a) to declare the rights and other legal relations of Fit Hit and Defendant.

7. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

8. Venue in this District is proper under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

## **FACTUAL BACKGROUND**

### **A. Defendant Insurance Policy**

9. This is an action that arises out of an incident whereby Fit Hit's property, insured by Defendant, was damaged as a result of piping and sprinkler system issues on September 25, 2023 (the "**Claim**").

10. Fit Hit, a family-owned business, operates as a two-level fitness studio located on the Premises, combining exercise and the practice of Krav Maga<sup>1</sup> to offer group fitness classes as well as personal Krav Maga defense classes.

11. The Premises is divided into several spaces, set forth below.

12. The lower level of the fitness studio (the "**Basement**"), where the majority of the damage occurred (as detailed herein), is a crucial part of the Premises because the Basement is where the group fitness classes take place.

13. The upper level of the Premises (the "**First Floor**") maintains only the lobby/check-in area and a small space reserved for personal Krav Maga sessions.

14. On or about June 13, 2023, Fit Hit renewed its policy with Defendant (the "**Policy**") for the Premises. *See* **Exhibit A**.

15. Defendant insured Fit Hit via the Policy under policy number **12-SBA-VV1980**, effective from June 13, 2023 to June 13, 2024. *Id.*

16. The Policy includes coverage for damage resulting from "sprinkler leakage" (*see* 1(f)(4) under "Exclusions" of the Policy) and further includes coverage for damage resulting from

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<sup>1</sup> Krav Maga is a form of martial arts originally developed for the Israeli Defense Force (IDF) derived from a combination of techniques focused on real-world situations and extreme efficiency, particularly with regard to self-defense.

Sewer and Drain Back Up (*see* A(17) under “Stretch Standard Property Form”), excerpts of which are below.

**f. Water**

- (1) Flood, including the accumulation of surface water, waves, tides, tidal waves, overflow of streams or any other bodies of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mud flow;
- (3) Water that backs up from a sewer or drain; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.But if loss or damage by fire, explosion or sprinkler leakage results, we will pay for that resulting physical loss or physical damage.

*See* **Exhibit A** at pp. 15-16 of Form SS 00 07 07 05.

**17. Sewer and Drain Back Up**

The following Additional Coverage is added:

We will pay for direct physical loss of or physical damage to Covered Property solely caused by water that backs up from a sewer or drain. This coverage is included within the Covered Property Limits of Insurance.

*See* **Exhibit A** at p. 4 of Form SS 04 08 09 07.

**B. The Events of September 25, 2023**

17. Upon information and belief, on September 25, 2023, the Premises incurred substantial water damage due to the mishandling of the sewer, pipes, and sprinkler system by the property owner, Koeppel Rosen LLC (“**Koeppel**”), including repair work conducted on such system at the time.

18. Upon information and belief, as a result of Koeppel’s mishandling of the building’s pipes and water systems, the Premises was caused to be flooded, substantially damaging Fit Hit’s studio located in the Basement, including but not limited to mats, electronic equipment, and other necessary equipment.

19. During this time, water was being forced into the Premises through the building’s piping, leaking from the ceiling and through the walls, as well as backing up through the drains and plumbing system.

20. As a result of the damage that occurred in the Basement, Fit Hit was completely unable to operate its group fitness sessions, its primary source of revenue, at normal capacity.

21. As a result of the damage that occurred to its mats, equipment, and electronics and sound system in the Basement, Fit Hit sustained a loss of over \$95,000.00 in damage alone.

22. Moreover, due to the damage, Fit Hit was forced to close its business for several days and, even after reopening, were forced to utilize a smaller space for nearly two (2) months due to the damage caused, severely disrupting normal operations.

23. As a result, Fit Hit has been damaged in an amount that exceeds the jurisdictional limits of this Court.

24. For an extended period of time, the sewer and drain back-up continued to cause water to come out of all open drains and contaminate the floors, including Fit Hit's bathrooms which were meant for client use.

25. As a result of the water issues, the property manager hired a plumber, Addison PHS Corp. ("**Addison**") on September 25, 2023, to, among other things, "remove the existing defective 4-inch sprinkler check valve.." See **Exhibit B**.

26. The plumbing required a process whereby "Addison completely relocated a 4-inch check valve to vault the area under the side wall." See **Exhibit B**.

27. This plumbing work, unfortunately, caused the sprinkler system and pipes to burst which resulted in the complete destruction of Fit Hit's mats, electronic system, sound system, and other property.

28. The Insurance Policy was in effect on the date of the accident and continues to be in effect.

29. Based on the above, the Claim qualifies within the Insured's coverage, policy number believed to be 12-SBA-VV1980.

**C. Fit Hit's Request to Defendant to Provide Insurance Coverage in Regard to the Claim and Defendant's Rejection.**

30. On or about September 26, 2023, Fit Hit first notified Defendant about the property damage that occurred on September 25, 2023, and requested coverage for the Claim.

31. Between September 28, 2023 and December 19, 2023, Fit Hit and Defendant's representative, Nicole Beverly, were in regular communication regarding the property damage.

32. Defendant requested several back up documents from Fit Hit, and Fit Hit provided Defendant with each and every requested document, including but not limited to invoices, photos, non-salvageable lists, etc.

33. Although Fit Hit has not received an official declination letter (even though it was requested by Fit Hit), on January 22, 2024, Defendant sent Fit Hit e-mail correspondence, refusing to provide coverage, wrongly asserting that the Property may not be covered because the damage resulted from flooding of rainwater. *See **Exhibit C***.

34. Upon information and belief, none of the damage that occurred on September 25, 2023, was caused by rainwater.

35. Defendant's only alleged basis for the denial was that, after a Defendant investigator spoke with Koeppel's property manager, Karen Mira ("**Mira**"), regarding the property damage, Mira claimed that the property damage was caused by rainwater.

36. Koeppel's and Mira's claims are completely false in nature as Koeppel was previously aware of the piping issues, particularly those involving the drainage issues on the Premises.

37. Upon information and belief, Koeppel and Mira had failed to address the drainage and sewer issues for months prior to the events of September 25, 2023.

38. Koeppel was well aware of the issues with the pipes, sewer, and sprinkler system because it previously attempted to remediate the issues some months prior.

39. However, when the piping system became defective again, Koeppel did nothing to fix the problem until Fit Hit notified them again on September 25, 2023, that the pipes had caused a flooding in the Basement.

40. Based on the evidence, including photographs and videotaped evidence, it is clear that the property damage resulted from the issues with the piping, sprinkler, and sewer system – which evidence was provided to Defendant.

41. On February 19, 2024, Fit Hit, by and through its attorneys, WILSON & CHAN, LLP, requested that Defendant acknowledge its obligation to provide insurance coverage to Fit Hit in regard to the Claim. *See* Letter from Fit Hit to Defendant dated February 19, 2024, attached hereto as **Exhibit D**.

42. To date, Defendant has neither responded to the Letter nor has it contacted Fit Hit to achieve a resolution regarding the Claim and/or to address the substantial property damage that was caused to Fit Hit's property.

43. An actual controversy exists between and among the parties as to their rights and obligations to Fit Hit in the underlying Claim under the Insurance Policy.

44. Circumstances exist that justify a determination by this Court, pursuant to 28 U.S.C. §2201, of the rights and obligations of the parties under the Insurance Policy, and that the determination will be beneficial for both parties.

45. Fit Hit has no adequate remedy at law.

**AS AND FOR A FIRST CAUSE OF ACTION**  
(Declaration of Coverage Under Insurance Policy)

46. Plaintiff repeats and re-alleges all of the allegations set forth in Paragraphs 1 through 44 as if set forth fully here.

47. There is an actual and present controversy between Fit Hit and Defendant concerning Defendant's obligation to provide coverage to Fit Hit as an insured under the Policy with regard to the underlying Claim.



48. Defendant's refusal to provide insurance coverage under the Policy even after Fit Hit provided it with substantial proof including invoices, photos, and estimates, was wrongful.

49. Fit Hit is entitled to a declaration that Defendant must provide coverage, which includes coverage for property damage and lost profits, to Fit Hit with regard to the underlying Claim under the Policy.

50. A judicial declaration of this issue is necessary and appropriate at this time to fully and finally determine Defendant's legal obligations to Fit Hit, including any and all coverage set forth in the Policy.

**WHEREFORE**, Plaintiff respectfully requests that this Court issue a declaratory judgment declaring the rights, duties, and obligations of the parties under the Policy with regard to the underlying Claim as follows:

- (a) On the First Cause of Action, a declaration that Defendant is obligated to provide coverage to Fit Hit under the Policy for the underlying Claim;
- (b) Costs of this action, including reasonable attorneys' fees and expenses, expert's fees and other disbursements; and
- (c) For such further and other relief as may be just, fair, and proper.

Dated: New York, New York  
April 5, 2024

**Wilson & Chan** LLP



By:

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